Updates
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Florida Court Refuses to Dismiss COVID-19-Related WARN Case Based on Natural Disaster Exception

A judge for the U.S. District Court for the Middle District of Florida, on March 17, 2022, denied defendant Scribe Opco, Inc.'s motion to dismiss a class action alleging violations of the Worker Adjustment and Retraining Notification (WARN) Act. *Jones v. Scribe Opco, Inc.*, No. 8:20-CV-2945-VMC-SPF, 2022 WL 813824, at *1 (M.D. Fla. Mar. 17, 2022).

The WARN act was passed to provide workers with sufficient time to prepare for the transition between the jobs they currently hold and new jobs. It generally requires employers to provide written notice at least 60 calendars days in advance of plant closings and mass layoffs. The act contains several exceptions including the so-called "natural disaster" exception, which provides "No notice under this chapter shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States." 29 U.S.C. § 2102 (b)(2)(B).

Here, the plaintiff alleged that Scribe violated the WARN Act when it failed to give her and hundreds of employees proper legal notice under the WARN Act. Scribe moved to dismiss plaintiff's complaint arguing that the claim is barred by the WARN Act's natural disaster exception because (1) the COVID-19 pandemic is a natural disaster and (2) the standard for causation under the natural disaster exception is "but-for" causation, which it contends is met here. The court disagreed.

First, the court deferred to the U.S. Department of Labor's (DOL) interpretation of the natural disaster exemption, which requires direct, and not "but-for," causation. The court reasoned that the phrase "due to" as used in the WARN Act leaves unclear the level of causation required and that the secretary of labor's interpretation of the natural disaster "is reasonable and warrants deference." According to the court, the DOL's interpretation makes sense, "because an employer cannot predict 60 days in advance that a worksite will be destroyed and may not be able to provide any advance notice before a mass layoff precipitated by that destruction." Conversely, "an employer suffering from indirect, downstream economic effects from a natural disaster, such as the local economy suffering after a recent flood in the area, has more time to predict that layoffs will become necessary" and "has a greater ability to provide advance notice to employees."

The court emphasized that its application of the direct causation standard would not leave employers experiencing the indirect effects of a natural disaster without relief as they can invoke the WARN Act's unforeseeable business circumstance exception. Unlike the natural disaster exception, the unforeseeable business circumstance exception does not state that "no notice" is required. Rather, it allows employers to provide less than 60 days' notice of an impending layoff when the closing or mass layoff "is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required." 29 U.S.C. § 2102(b)(2)(A). Employers invoking this exception must still "give as much notice as is practicable." 29 U.S.C. § 2102(b)(3). In sum, the court found, "[r]eading the natural disaster exception as requiring direct causation promotes the central purpose of the WARN Act—to provide employees with reasonable advance notice of impending layoffs—without preventing employers indirectly affected by natural disasters from utilizing the unforeseeable business circumstance exception."

Having decided to apply the direct causation standard to the natural disaster exception, the court then found that the amended complaint plausibly alleges that the layoffs at question were not directly caused by the COVID-19 pandemic. The amended complaint's allegations that "the plant closings and/or mass layoffs in this case were 'due to' the economic downturn [Scribe]'s manufacturing business," which in turn was "'due to' governmental mandates and private-sector choices made considering the appearance and growth of the pandemic" precluded dismissal at this time.

Notably, this court's opinion directly contrasts with a prior U.S. District Court for the Southern District of Texas opinion finding that "the WARN Act's language, structure, and legislative history, as well as case law interpretating similar statutory language, support finding that the natural-disaster exception uses but-for causation standards." *Easom v. US Well Services, Inc.*, 527 F. Supp. 3d 898, 915 (S.D. Tex. 2021). The *Easom* court then concluded that the "COVID-19 pandemic need not be the direct or sole cause of the layoffs for the natural-disaster exception to apply." The *Easom* decision is currently on appeal before the U.S. Court of Appeals for the Fifth Circuit. In short, this is an evolving area of the law and employers should be wary of relying solely on the natural disaster exception when giving less than 60 days' notice under the WARN Act.

Authors

Emily A. Bushaw

Partner
EBushaw@perkinscoie.com 206.359.3069

Michael Alexander Pratt

Counsel
AlexanderPratt@perkinscoie.com 214.259.4922

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